

109TH CONGRESS
2D SESSION

S. 4087

To amend the Internal Revenue Code to provide a tax credit to individuals who enter into agreements to protect the habitats of endangered and threatened species, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2006

Mr. CRAPO (for himself, Mrs. LINCOLN, Mr. GRASSLEY, Mr. BAUCUS, and Mr. ALLARD) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code to provide a tax credit to individuals who enter into agreements to protect the habitats of endangered and threatened species, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Endangered Species
5 Recovery Act of 2006”.

6 **SEC. 2. ENDANGERED SPECIES RECOVERY CREDIT.**

7 (a) IN GENERAL.—Subpart B of part IV of sub-
8 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 is amended by adding at the end the following new
2 section:

3 **“SEC. 30D. ENDANGERED SPECIES RECOVERY CREDIT.**

4 “(a) IN GENERAL.—In the case of an eligible tax-
5 payer, there shall be allowed as a credit against the tax
6 imposed by this chapter for the taxable year an amount
7 equal to the sum of—

8 “(1) the habitat protection easement credit,
9 plus

10 “(2) the habitat restoration credit.

11 “(b) LIMITATION.—

12 “(1) IN GENERAL.—The credit allowed under
13 subsection (a) for any eligible taxpayer for any tax-
14 able year shall not exceed the endangered species re-
15 covery credit limitation allocated to the eligible tax-
16 payer under subsection (f) for the calendar year in
17 which the taxpayer’s taxable year ends.

18 “(2) CARRYFORWARDS.—

19 “(A) IN GENERAL.—If the amount of the
20 credit allowable under subsection (a) for any
21 taxpayer for any taxable year exceeds the en-
22 dangered species recovery credit limitation allo-
23 cated under subsection (f) to such taxpayer for
24 the calendar year in which the taxpayer’s tax-
25 able year ends, such excess may be carried for-

ward to the next taxable year for which such taxpayer is allocated a portion of the endangered species recovery credit limitation.

“(B) CARRYFORWARD OF ALLOCATION AMOUNT.—If the amount of the endangered species recovery credit limitation allocated to an eligible taxpayer for any calendar year under subsection (f) exceeds the amount of the credit allowed to the taxpayer under subsection (a) for the taxable year ending in such calendar year, such excess may be carried forward to the next taxable year of the taxpayer. For purposes of this paragraph, any amount carried to another taxable year under this subparagraph shall be treated as allocated to the taxpayer for use in such taxable year under subsection (f).

“(c) ELIGIBLE TAXPAYER.—For purposes of this section—

“(1) IN GENERAL.—The term ‘eligible taxpayer’ means—

“(A) a taxpayer who—

“(i) owns real property which contains the habitat of a qualified species, and

“(ii) enters into a qualified perpetual habitat protection agreement, a qualified

30-year habitat protection agreement, or a
 qualified habitat protection agreement with
 the appropriate Secretary with respect to
 such real property, and

“(B) any other taxpayer who—

“(i) is a party to a qualified perpetual
 habitat protection agreement, a qualified
 30-year habitat protection agreement, or a
 qualified habitat protection agreement, and

“(ii) as part of any such agreement,
 agrees to assume responsibility for costs
 paid or incurred in protecting or pre-
 serving the habitat which is the subject of
 such agreement.

“(2) QUALIFIED PERPETUAL HABITAT PROTEC-
 TION AGREEMENT.—The term ‘qualified perpetual
 habitat protection agreement’ means an agree-
 ment—

“(A) under which the taxpayer grants to
 the appropriate Secretary, the Secretary of Ag-
 riculture, or a State an easement in perpetuity
 for the protection of the habitat of a qualified
 species, and

“(B) which meets the requirements of
 paragraph (5).

1 “(3) QUALIFIED 30-YEAR HABITAT PROTECTION
2 AGREEMENT.—The term ‘qualified 30-year habitat
3 protection agreement’ means an agreement—

4 “(A) under which the taxpayer grants to
5 the appropriate Secretary, the Secretary of Ag-
6 riculture, or a State an easement for a period
7 of not less than 30 years and less than per-
8 petuity for the protection of the habitat of a
9 qualified species, and

10 “(B) which meets the requirements of
11 paragraph (5).

12 “(4) QUALIFIED HABITAT PROTECTION AGREE-
13 MENT.—The term ‘qualified habitat protection
14 agreement’ means an agreement—

15 “(A) under which the taxpayer enters into
16 an agreement with the appropriate Secretary,
17 the Secretary of Agriculture, or a State to pro-
18 tect the habitat of a qualified species for a spec-
19 ified period of time, and

20 “(B) which meets the requirements of
21 paragraph (5).

22 “(5) REQUIREMENTS.—An agreement meets
23 the requirements of this paragraph if—

24 “(A) the agreement is not inconsistent
25 with any recovery plan which has been approved

1 for a qualified species under section 4 of the
2 Endangered Species Act of 1973,

3 “(B) the appropriate Secretary and the eli-
4 gible taxpayer enter into a habitat management
5 plan designed to—

6 “(i) restore or enhance the habitat of
7 a qualified species, or

8 “(ii) reduce threats to a qualified spe-
9 cies through the management of the habi-
10 tat, and

11 “(C) the appropriate Secretary ensures
12 that the eligible taxpayer is provided with tech-
13 nical assistance in carrying out the duties of the
14 taxpayer under the terms of the agreement.

15 “(d) HABITAT PROTECTION EASEMENT CREDIT.—

16 “(1) IN GENERAL.—For purposes of subsection
17 (a)(1), the habitat protection easement credit for
18 any taxable year is an amount equal to—

19 “(A) in the case of an eligible taxpayer
20 who has entered into a qualified perpetual habi-
21 tat protection agreement during such taxable
22 year, 100 percent of the excess (if any) of—

23 “(i) the fair market value of the real
24 property with respect to which the quali-
25 fied perpetual habitat protection agreement

1 is made, determined on the day before
 2 such agreement is entered into, over

3 “(ii) the fair market value of such
 4 property, determined on the day after such
 5 agreement is entered into,

6 “(B) in the case of an eligible taxpayer
 7 who has entered into a qualified 30-year habitat
 8 protection agreement during such taxable year,
 9 75 percent of such excess, and

10 “(C) in the case of any other eligible tax-
 11 payer, zero.

12 “(2) REDUCTION FOR AMOUNT RECEIVED FOR
 13 EASEMENT.—The credit allowed under subsection
 14 (a)(1) shall be reduced by any amount received by
 15 the taxpayer in connection with the easement.

16 “(3) LIMITATION BASED ON AMOUNT OF
 17 TAX.—The credit allowed under subsection (a)(1) for
 18 any taxable year shall not exceed the sum of—

19 “(A) the taxpayer’s regular tax liability for
 20 the taxable year reduced by the sum of the
 21 credits allowable under subpart A and sections
 22 27, 30, 30B, and 30C, and

23 “(B) the tax imposed by section 55(a) for
 24 the taxable year.

1 “(4) CARRYFORWARD OF UNUSED CREDIT.—If
 2 the credit allowable under subsection (a)(1) for any
 3 taxable year exceeds the limitation imposed by para-
 4 graph (3) for such taxable year, such excess shall be
 5 carried to the succeeding taxable year and added to
 6 the credit allowable under subsection (a)(1) for such
 7 succeeding taxable year.

8 “(5) QUALIFIED APPRAISALS REQUIRED.—No
 9 amount shall be taken into account under this sub-
 10 section unless the eligible taxpayer includes with the
 11 taxpayer’s return for the taxable year a qualified ap-
 12 praisal (within the meaning of section
 13 170(f)(11)(E)) of the real property.

14 “(e) HABITAT RESTORATION CREDIT.—

15 “(1) IN GENERAL.—For purposes of subsection
 16 (a)(2), the habitat restoration credit for any taxable
 17 year shall be an amount equal to—

18 “(A) in the case of a qualified perpetual
 19 habitat protection agreement, 100 percent of
 20 the costs paid or incurred by an eligible tax-
 21 payer during such taxable year pursuant to
 22 such agreement,

23 “(B) in the case of a qualified 30-year
 24 habitat protection agreement, 75 percent of the
 25 costs paid or incurred by an eligible taxpayer

1 during such taxable year pursuant to such
2 agreement, and

3 “(C) in the case of a qualified habitat pro-
4 tection agreement, 50 percent of the costs paid
5 or incurred by an eligible taxpayer during such
6 taxable year pursuant to such agreement.

7 “(2) LIMITATION BASED ON AMOUNT OF
8 TAX.—The credit allowed under subsection (a)(2) for
9 any taxable year shall not exceed the excess (if any)
10 of—

11 “(A) the regular tax liability for the tax-
12 able year reduced by the sum of the credits al-
13 lowable under subpart A and sections 27, 30,
14 30B, and 30C, over

15 “(B) the tentative minimum tax for the
16 taxable year.

17 “(3) CARRYFORWARD OF UNUSED CREDIT.—If
18 the credit allowable under subsection (a)(2) for any
19 taxable year exceeds the limitation imposed by para-
20 graph (2) for such taxable year, such excess shall be
21 carried to the succeeding taxable year and added to
22 the credit allowable under subsection (a)(2) for such
23 succeeding taxable year.

24 “(4) SPECIAL RULES.—

1 “(A) CERTAIN COSTS NOT INCLUDED.—No
2 credit shall be allowed under subsection (a)(2)
3 for any cost which is paid or incurred by a tax-
4 payer to comply with any requirement of a Fed-
5 eral, State, or local government.

6 “(B) SUBSIDIZED FINANCING.—For pur-
7 poses of paragraph (1), the amount of costs
8 paid or incurred by an eligible taxpayer pursu-
9 ant to any agreement described in subsection
10 (c) shall be reduced by the amount of any fi-
11 nancing provided under any Federal or State
12 program a principal purpose of which is to sub-
13 sidize financing for the conservation of the
14 habitat of a qualified species.

15 “(f) ENDANGERED SPECIES RECOVERY CREDIT LIM-
16 ITATION.—

17 “(1) IN GENERAL.—There is an endangered
18 species recovery credit limitation for each calendar
19 year. Such limitation is —

20 “(A) for 2007, 2008, 2009, 2010, and
21 2011—

22 “(i) \$300,000,000 with respect to
23 qualified perpetual habitat protection
24 agreements,

1 “(ii) \$60,000,000 with respect to
2 qualified 30-year habitat protection agree-
3 ments, and

4 “(iii) \$40,000,000 with respect to
5 qualified habitat protection agreements,
6 and

7 “(B) except as provided in paragraph (3),
8 zero thereafter.

9 “(2) ALLOCATION OF LIMITATION.—

10 “(A) IN GENERAL.—The Secretary, in con-
11 sultation with the Secretary of the Interior and
12 the Secretary of Commerce, shall allocate the
13 endangered species recovery credit limitation to
14 eligible taxpayers.

15 “(B) CONSIDERATIONS.—In making allo-
16 cations to eligible taxpayers under this section,
17 priority shall be given to taxpayers with agree-
18 ments—

19 “(i) relating to habitats that will sig-
20 nificantly increase the likelihood of recov-
21 ering and delisting a species as an endan-
22 gered species or a threatened species (as
23 defined under section 2 of the Endangered
24 Species Act of 1973),

1 “(ii) that are cost-effective and maxi-
2 mize the benefits to a qualified species per
3 dollar expended,

4 “(iii) relating to habitats of species
5 which have a federally approved recovery
6 plan pursuant to section 4 of the Endan-
7 gered Species Act of 1973,

8 “(iv) relating to habitats with the po-
9 tential to contribute significantly to the im-
10 provement of the status of a qualified spe-
11 cies,

12 “(v) relating to habitats with the po-
13 tential to contribute significantly to the
14 eradication or control of invasive species
15 that are imperiling a qualified species,

16 “(vi) with habitat management plans
17 that will manage multiple qualified species,

18 “(vii) with habitat management plans
19 that will create adjacent or proximate habi-
20 tat for the recovery of a qualified species,

21 “(viii) relating to habitats for quali-
22 fied species with an urgent need for protec-
23 tion,

24 “(ix) with habitat management plans
25 that assist in preventing the listing of a

1 species as endangered or threatened under
2 the Endangered Species Act of 1973 or a
3 similar State law,

4 “(x) with habitat management plans
5 that may resolve conflicts between the pro-
6 tection of qualified species and otherwise
7 lawful human activities, and

8 “(xi) with habitat management plans
9 that may resolve conflicts between the pro-
10 tection of a qualified species and military
11 training or other military operations.

12 “(3) CARRYOVER OF UNUSED LIMITATION.—If
13 for any calendar year the limitation under paragraph
14 (1) (after the application of this paragraph) exceeds
15 the amount allocated to all eligible taxpayers for
16 such calendar year, the limitation amount for the
17 following calendar year shall be increased by the
18 amount of such excess.

19 “(g) OTHER DEFINITIONS AND SPECIAL RULES.—

20 “(1) APPROPRIATE SECRETARY.—The term ‘ap-
21 propriate Secretary’ has the meaning given to the
22 term ‘Secretary’ under section 3(15) of the Endan-
23 gered Species Act of 1973.

1 “(2) HABITAT MANAGEMENT PLAN.—The term
2 ‘habitat management plan’ means, with respect to
3 any habitat, a plan which—

4 “(A) identifies one or more qualified spe-
5 cies to which the plan applies,

6 “(B) describes the management practices
7 to be undertaken by the taxpayer,

8 “(C) describes the technical assistance to
9 be provided to the taxpayer and identifies the
10 entity that will provide such assistance,

11 “(D) provides a schedule of deadlines for
12 undertaking such management practices, and

13 “(E) requires monitoring of the manage-
14 ment practices and the status of the qualified
15 species.

16 “(3) QUALIFIED SPECIES.—The term ‘qualified
17 species’ means—

18 “(A) any species listed as an endangered
19 species or threatened species under the Endan-
20 gered Species Act of 1973, or

21 “(B) any species for which a finding has
22 been made under section 4(b)(3) of Endangered
23 Species Act of 1973 that listing under such Act
24 may be warranted.

1 “(4) TAKING.—The term ‘taking’ has the
2 meaning given to such term under the Endangered
3 Species Act of 1973.

4 “(5) REDUCTION IN BASIS.—For purposes of
5 this subtitle, the basis of any property for which a
6 credit is allowable under subsection (a)(1) shall be
7 reduced by the amount of the credit so allowed.

8 “(6) DENIAL OF DOUBLE BENEFIT.—No deduc-
9 tion shall be allowed under this chapter for any
10 amount with respect to which a credit is allowed
11 under subsection (a).

12 “(7) CERTIFICATION.—No credit shall be al-
13 lowed under subsection (a) unless the appropriate
14 Secretary certifies that any agreement described in
15 subsection (c) which is entered into by an eligible
16 taxpayer will contribute to the recovery of a qualified
17 species.

18 “(8) REQUEST FOR AUTHORIZATION OF INCI-
19 DENTAL TAKINGS.—The Secretary shall request the
20 appropriate Secretary to consider whether to author-
21 ize under the Endangered Species Act of 1973
22 takings by an eligible taxpayer of a qualified species
23 to which an agreement described in subsection (c)
24 relates if the takings are incidental to—

1 “(A) the restoration, enhancement, or
 2 management of the habitat pursuant to the
 3 habitat management plan under the agreement,
 4 or

5 “(B) the use of the property to which the
 6 agreement pertains at any time after the expi-
 7 ration of the easement or the specified period
 8 described in subsection (c)(4)(A), but only if
 9 such use will leave the qualified species at least
 10 as well off on the property as it was before the
 11 agreement was made.

12 “(9) RECAPTURE.—The Secretary shall, by reg-
 13 ulations, provide for recapturing the benefit under
 14 any credit allowable under subsection (a) if the Sec-
 15 retary, in consultation with the appropriate Sec-
 16 retary, determines that the eligible taxpayer has
 17 failed to carry out the duties of the taxpayer under
 18 the terms of a qualified perpetual habitat protection
 19 agreement, a qualified 30-year habitat protection
 20 agreement, or a qualified habitat protection agree-
 21 ment.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) Section 1016(a) of the Internal Revenue
 24 Code of 1986 is amended by striking “and” at the
 25 end of paragraph (36), by striking the period at the

1 end of paragraph (37) and inserting “, and”, and by
 2 inserting after paragraph (37) the following new
 3 paragraph:

4 “(38) to the extent provided in section
 5 30D(g)(5).”.

6 (2) The table of sections for subpart B of part
 7 IV of subchapter A of chapter 1 of such Code is
 8 amended by inserting after the item relating to sec-
 9 tion 30C the following new item:

“Sec. 30D. Endangered species recovery credit.”.

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to taxable years beginning after
 12 December 31, 2006.

13 **SEC. 3. DEDUCTION FOR ENDANGERED SPECIES RECOV-**
 14 **ERY EXPENDITURES.**

15 (a) DEDUCTION FOR ENDANGERED SPECIES RECOV-
 16 ERY EXPENDITURES.—

17 (1) IN GENERAL.—Paragraph (1) of section
 18 175(c) of the Internal Revenue Code of 1986 (relat-
 19 ing to definitions) is amended by inserting after the
 20 first sentence the following new sentence: “Such
 21 term shall include expenditures paid or incurred for
 22 the purpose of achieving specific actions rec-
 23 ommended in recovery plans approved pursuant to
 24 the Endangered Species Act of 1973.”.

25 (2) CONFORMING AMENDMENTS.—

1 (A) Section 175 of such Code is amended
 2 by inserting “, or for endangered species recov-
 3 ery” after “prevention of erosion of land used
 4 in farming” each place it appears in subsections
 5 (a) and (c).

6 (B) The heading of section 175 of such
 7 Code is amended by inserting “; **ENDAN-
 8 GERED SPECIES RECOVERY EXPENDI-
 9 TURES**” before the period.

10 (C) The item relating to section 175 in the
 11 table of sections for part VI of subchapter B of
 12 chapter 1 of such Code is amended by inserting
 13 “; endangered species recovery expenditures”
 14 before the period.

15 (b) LIMITATIONS.—Paragraph (3) of section 175(c)
 16 of the Internal Revenue Code of 1986 (relating to addi-
 17 tional limitations) is amended—

18 (1) in the heading, by inserting “OR ENDAN-
 19 GERED SPECIES RECOVERY PLAN” after “CONSERVA-
 20 TION PLAN”, and

21 (2) in subparagraph (A)(i), by inserting “or the
 22 recovery plan approved pursuant to the Endangered
 23 Species Act of 1973” after “Department of Agri-
 24 culture”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to expenditures paid or incurred
 3 after the date of the enactment of this Act.

4 **SEC. 4. EXCLUSION FOR COST SHARING PAYMENTS UNDER**
 5 **THE PARTNERS FOR FISH AND WILDLIFE ACT**
 6 **AND CERTAIN OTHER PROGRAMS AUTHOR-**
 7 **IZED BY THE FISH AND WILDLIFE ACT OF**
 8 **1956.**

9 (a) IN GENERAL.—Subsection (a) of section 126 of
 10 the Internal Revenue Code of 1986 (relating to certain
 11 cost-sharing payments) is amended by redesignating para-
 12 graph (10) as paragraph (12) and by inserting after para-
 13 graph (9) the following new paragraphs:

14 “(10) The Partners for Fish and Wildlife Pro-
 15 gram authorized by the Partners for Fish and Wild-
 16 life Act.

17 “(11) The Landowner Incentive Program, the
 18 State Wildlife Grants Program, and the Private
 19 Stewardship Grants Program authorized by the Fish
 20 and Wildlife Act of 1956.”.

21 (b) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to payments received after the date
 23 of the enactment of this Act.

